

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE BOROUGH OF GETTYSBURG RELATIVE TO THE ESTABLISHMENT AND MAINTENANCE OF THE NON-UNIFORMED EMPLOYEES' PENSION, ANNUITY, INSURANCE AND BENEFIT FUND OR FUNDS, TO AMEND CERTAIN PROVISIONS OF THE PENSION PLAN OR PROGRAM APPLICABLE TO THE NON-UNIFORMED EMPLOYEES OF SAID BOROUGH.**

**WHEREAS**, the Borough of Gettysburg (hereinafter referred to as the "Borough") has previously enacted an ordinance establishing the Borough of Gettysburg Non-Uniformed Employees' Pension Plan (hereinafter referred to as the "Plan"); and

**WHEREAS**, the Borough retains the right to amend the Plan; and

**WHEREAS**, the Borough now desires to amend the Plan to comply with the applicable provisions of the Internal Revenue Code; and

**NOW, THEREFORE, BE IT ENACTED, ADOPTED AND ORDAINED** by the Borough Council of the Borough of Gettysburg, Adams County, Pennsylvania, and it is hereby enacted, adopted and ordained by authority of the same that, except as otherwise described herein, effective as of \_\_\_\_\_, 2012, the Plan is hereby amended as follows:

**SECTION 1:** The preamble entitled, ESTABLISHMENT is amended by restating clause (C) as follows:

- (C) WHEREAS, the Council of the Borough of Gettysburg intends that the Plan shall satisfy the requirements of §401(a) of the Internal Revenue Code (the "Code") that are applicable to governmental plans, as defined in Code § 414(d), and the applicable laws of the Commonwealth of Pennsylvania and desires to amend the Plan hereinafter set forth;

**SECTION 2:** Subsection (b) of Section 11.04 is restated as follows:

- (b) Effective Date. If there is more than one permitted effective date for any change, the change shall be effective as of the latest permissible effective date; however, any adjustment in the dollar limit under Code Section 415(b)(1)(A), whether required or permissible, shall take effect automatically as of the earliest permissible effective date. Effective as of January 1, 2008 the "applicable mortality table" and "applicable interest rate" are found in Rev. Rul. 2007-67. The "applicable mortality table" in Rev. Rul. 2001-62 was effective from December 31, 2002 through December 31, 2007.

**SECTION 3:** Section 11.05 of the Plan is amended to restate subsection (a) and to add new subsection (d) as follows:

- (a) Annual Additions - Except as otherwise provided, annual additions (which include Participant Contributions) under this Plan shall at all times comply with the provisions of Code Section 415(c) and the regulations thereunder, the terms of which are specifically incorporated herein by reference. If an annual addition would otherwise exceed the limit under Code Section 415(c), the excess annual addition will be eliminated in accordance with methods permitted under Rev. Proc. 2008-50 (Rev. Proc. 2006-27 prior to 2009) or its successor.
- (d) 415(c) Compensation. For the purposes of this Section, "compensation" includes only those items specified in Treas. Reg. §1.415(c)-2(b)1 or (2) and excludes all items listed in Treas. Reg. §1.415(c)-2(c), the terms of which are specifically incorporated herein by reference. Effective as of January 1, 2009, to the extent required by the Heroes Earnings Assistance Relief Tax Act of 2008 (HEART Act), differential wage payments shall be included in Compensation

**SECTION 4:** Section 11.06 of the Plan is superseded by the following:

#### 11.06 LIMIT ON COMPENSATION

- (a) Compensation is subject to the limitation under Code Section 401(a)(17), which is \$245,000 for the Plan Year beginning in 2010. The limit is automatically adjusted periodically, without formal amendment, for changes in the law and cost-of-living adjustments under Code Section 401(a)(17).
- (b) The annual compensation limitations of Code Section 401(a)(17) shall be applied as follows:
  - (1) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, shall not apply to any eligible participant, in any future year, to the extent that the application of the annual compensation limit in Code Section 401(a)(17), as amended by OBRA '93, would reduce the amount of annual compensation that is allowed to be taken into account under the fund below the amount that was allowed to be taken into account under the fund as in effect on July 1, 1993. As used in this section, "eligible participants" includes all members who participated in the fund prior to July 1, 1996.

- (2) The annual compensation limit under Code Section 401(a)(17), as amended by OBRA '93, will be effective with respect to noneligible participants as of July 1, 1996. As used in this section, "noneligible participants" includes all members who did not participate in the fund prior to July 1, 1996. 401(a)(17) of the Code.

**SECTION 5:** Section 11.07 of the Plan shall be amended to add new subsection (d) as follows:

- (d) Notwithstanding (a.) and (b) of this section, distributions may be made under a designation made before January 1, 1984, in accordance with Section 242(b)(2) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) and the provisions of the plan that relate to 242(b)(2).

**SECTION 6:** Section 11.09 of the Plan is amended to restate subsections (b)(1) and (b)(2) and to add new subsection (c) as follows:

- (b) For purposes of this section, the following definitions shall apply:
  - (1) An "eligible rollover distribution" is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; (ii) any distribution to the extent such distribution is required under Code Section 401(a)(9); (iii) the portion of any distribution that is not includible in gross income (determined without regard to the exclusion for net unrealized appreciation with respect to employer securities), and (iv) effective as of January 1, 2002, any hardship distribution. Effective as of January 1, 2002 clause (iii) does not apply to any after-tax Participant contributions that are paid to an individual retirement account or annuity described in Code Section 408(a) or (b), or to a qualified defined contribution plan described in Code Section 401(a) or 403(a), or effective as of January 1, 2007, any 403(b) annuity contract that agrees to separately account for amounts so transferred, including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.
  - (2) An "eligible retirement plan" is an individual retirement account described in Code Section 408(a), an individual retirement annuity described in Code Section 408(b), an annuity plan described in

Code Section 403(a), or a qualified trust described in Code Section 401(a), that accepts the distributee's eligible rollover distribution. However, in the case of an eligible rollover distribution to a surviving spouse, prior to January 1, 2002, an eligible retirement plan was an individual retirement account or individual retirement annuity. Effective as of January 1, 2002, an "eligible retirement plan" includes an annuity contract described in Code Section 403(b) and an eligible plan under Code Section 457(b) which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this plan. Effective as of January 1, 2008 a Roth IRA is an "eligible retirement plan."

- (c) Non-Spouse Beneficiaries - Effective as of January 1, 2007, if a Beneficiary who is not a surviving spouse is entitled to receive what would otherwise be an "eligible rollover distribution," the Beneficiary may, in accordance with Code Section 402(c)(11), make a trustee-to-trustee transfer of that amount to an IRA or individual retirement annuity (other than an endowment contract); provided that:
  - (1) the transfer is made not later than the end of the fourth year after the year of the Participant's death, and
  - (2) the account or annuity to which the amount is transferred is treated as an inherited IRA or individual retirement annuity in accordance with Code Section 408(d)(3)(C).

**SECTION 7:** New Section 11.14 and Section 11.15 are added to Article XI as follows:

#### 11.14 HEART ACT

Effective for participant deaths occurring while performing qualified military service (as defined in Code Section 414(u)) on or after January 1, 2007, the Plan will provide retirement benefits and service credit to the extent required by the Heart Act.

#### 11.15 FULL VESTING AT NORMAL RETIREMENT AGE

A Participant's Normal Retirement Benefit shall be 100% vested upon attainment of his Normal Retirement Age.

**SECTION 8:** All remaining provisions of the Borough of Gettysburg Non-Uniformed Employees' Pension Plan shall remain in full force and effect unless otherwise repealed by any other ordinance. All other ordinances and parts of ordinances inconsistent herewith are hereby repealed.

**THIS ORDINANCE DULY ENACTED AND ORDAINED** according to law on this 8<sup>th</sup> day of February, 2016, at a duly advertised general monthly business meeting of the Borough Council of the Borough of Gettysburg, Adams County, Pennsylvania.

**BOROUGH OF GETTYSBURG**

By: \_\_\_\_\_  
Robert L. Krummerich  
President of Borough Council

Attest:

\_\_\_\_\_  
Sara L. Stull, Secretary

**APPROVED**, this 8<sup>th</sup> day of February, 2016.

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William E. Troxell, Mayor